

employer to secure the payment of compensation due his employees under the LHWCA as amended or a statutory extension thereof.

(14) The terms *wages, national average weekly wage, injury, disability, death, and compensation* shall have the meanings set forth in section 2 of the LHWCA.

(15) *Claimant* includes any person claiming compensation or benefits under the provisions of the LHWCA as amended or a statutory extension thereof on account of the injury or death of an employee.

(b) The definitions contained in paragraph (a) of this section shall not be considered to derogate from any definitions or delimitations of terms in the LHWCA as amended or any of its statutory extensions in any case where such statutory definitions or delimitations would be applicable.

(c) As used in this subchapter, the singular includes plural and the masculine includes the feminine.

[38 FR 26860, Sept. 26, 1973, as amended at 42 FR 3848, Jan. 21, 1977; 50 FR 391, Jan. 3, 1985; 51 FR 4281, Feb. 3, 1986; 55 FR 28606, July 12, 1990; 70 FR 43233, July 26, 2005; 76 FR 82127, Dec. 30, 2011; 77 FR 37286, June 21, 2012]

#### § 701.302 Who is an employee?

(a) *Employee* means any person engaged in maritime employment, including:

(1) Any longshore worker or other person engaged in longshoring operations;

(2) Any harbor worker, including a ship repairer, shipbuilder and shipbreaker; and

(3) Any other individual to whom an injury may be the basis for a compensation claim under the LHWCA as amended, or any of its extensions;

(b) The term does not include:

(1) A master or member of a crew of any vessel; or

(2) Any person engaged by a master to load or unload or repair any small vessel under eighteen tons net.

(c) Nor does this term include the following individuals (whether or not the injury occurs over the navigable waters of the United States) where it is first determined that they are covered by a state workers' compensation act:

(1) Individuals employed exclusively to perform office clerical, secretarial, security, or data processing work (but not longshore cargo checkers and cargo clerks);

(2) Individuals employed by a club (meaning a social or fraternal organization whether profit or nonprofit), camp, recreational operation (meaning any recreational activity, including but not limited to scuba diving, commercial rafting, canoeing or boating activities operated for pleasure of owners, members of a club or organization, or renting, leasing or chartering equipment to another for the latter's pleasure), restaurant, museum or retail outlet;

(3) Individuals employed by a marina, provided they are not engaged in its construction, replacement or expansion, except for routine maintenance such as cleaning, painting, trash removal, housekeeping and small repairs;

(4) Employees of suppliers, vendors and transporters temporarily doing business on the premises of a covered employer, provided they are not performing work normally performed by employees of the covered employer;

(5) Aquaculture workers, meaning those employed by commercial enterprises involved in the controlled cultivation and harvest of aquatic plants and animals, including the cleaning, processing or canning of fish and fish products, the cultivation and harvesting of shellfish, and the controlled growing and harvesting of other aquatic species; or

(6) Individuals employed to build any recreational vessel under sixty-five feet in length, or individuals employed to repair any recreational vessel, or to dismantle any part of a recreational vessel in connection with the repair of such vessel. For purposes of this paragraph, the special rules set forth at §§ 701.501 through 701.505 apply.

[76 FR 82127, Dec. 30, 2011]

#### COVERAGE UNDER STATE COMPENSATION PROGRAMS

#### § 701.401 Coverage under state compensation programs.

(a) Exclusions from the definition of "employee" under § 701.301(a)(12), and the employees of small vessel facilities